

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

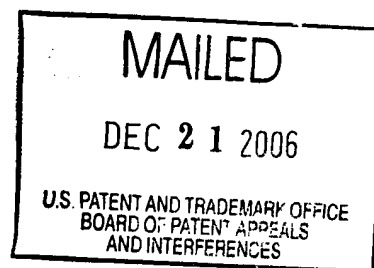
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. DOUGLASS THOMAS, ALBERT S. PENILLA, and
JOSEPH A. NGUYEN

Appeal No. 2006-2758
Application No. 09/098,279

ON BRIEF



Before THOMAS, JERRY SMITH, and HOMERE, Administrative Patent Judges.

HOMERE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the rejection of claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 through 50 and 52 through 66, all of which are pending in this application.

Claims 3, 6, 10, 19 through 25, 32 through 38, 45, 46 and 51 have been cancelled by Appellants.

We affirm.

Invention

Appellants' invention relates generally to a surveillance method and system (600) for remotely monitoring the internal region of a building (102) and for notifying an interested user of a detected intrusion. First, a camera (604) located within the building captures a surveillance image, and forwards it to a comparison unit (612) within the image controller (602) to compare the captured image with a reference image (610). Upon detecting a difference between the two images, a notification unit (616) within the controller sends an electronic notification to an interested user of a possible intrusion.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A surveillance method for operating a general purpose computer to provide remote surveillance of an internal area of a building comprising:

receiving a surveillance image from a local camera directed at the internal area of the building;

comparing the surveillance image with a reference image to produce a comparison result;

detecting presence of an activity condition based on the comparison result; and

notifying an interested user of the activity condition when the presence of the activity condition is detected,

configuring, prior to said receiving, comparing, detecting and notifying, said general purpose computing device so as to automatically notify the interested user via a predetermined mailing address when an activity condition is subsequently detected,

wherein said notifying includes at least transmitting the surveillance image to a remote computer over a global computer network automatically when the activity condition is detected, and

wherein said transmitting includes forming an electronic mail message having a predetermined mailing address, the predetermined mailing address being associated with the interested user and being provided during said configuring, and electronically mailing the surveillance image to the remote computer over the network using the electronic mail message.

References

The Examiner relies on the following references:

Maeno	5,283,644	Feb. 1, 1994
Ng	5,731,832	Mar. 24, 1998
		(filed Nov. 5, 1996)
Glatt ¹	5,926,209	July 20, 1999
		(filed Apr. 14, 1995)
Acosta et al. (Acosta ²)	6,166,729	Dec. 26, 2000
		(filed May 7, 1997)
Parulski et al. (Parulski)	6,573,927	June 3, 2003
		(filed Nov. 24, 1997)

¹We note that the Examiner omitted this reference from the list of references relied upon, at page 4, section (8) of the Examiner's Answer.

² Id.

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Rejections at Issue

A. Claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng and Maeno.³

B. Claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng and Parulski.⁴

C. Claims 13 through 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng, Parulski and Glatt.

D. Claims 49, 50, 52 through 61 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng and Acosta.

E. Claims 62 through 66 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng, Acosta and Glatt.

³We note that the Examiner's statement of rejection incorrectly includes deleted claims 45 and 46.

⁴Id.

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Rather than reiterate the arguments of Appellants and the Examiner, the opinion refers to respective details in the Briefs⁵ and the Examiner's Answer.⁶ Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the Briefs have not been taken into consideration. See 37 CFR 41.37(c)(1)(vii)(eff. Sept. 13, 2004).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the Examiner's rejections, the arguments in support of the rejections and the evidence of obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejections and arguments in the rebuttal set forth in the Examiner's Answer.

⁵ Appellants filed an Appeal Brief on February 3, 2006. Appellants filed a Reply Brief on June 26, 2006. Appellants filed two prior Appeal Briefs on May 26, 2005 and May 27, 2003 to appeal the Examiner's earlier rejections of the claims. In response, the Examiner withdrew the rejections and reopened prosecution. Consequently, we will not be considering Appellants' arguments submitted in these earlier Briefs. References made herein will be solely directed to arguments made by Appellants in the current Appeal and Reply Briefs.

⁶ The Examiner mailed an Examiner's Answer on April 20, 2006. The Examiner mailed a communication on July 12, 2006 indicating that the reply Brief has been entered and considered.

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After full consideration of the record before us, we agree with the Examiner that claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 are properly rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng and Maeno. Similarly, we agree with the Examiner that claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 are properly rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng and Parulski. Further, we agree with the Examiner that claims 49, 50, 52 through 61 are properly rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Ng and Acosta. Additionally, we agree with the Examiner that claims 13 through 15, 62 through 66 are properly rejected under 35 U.S.C. § 103 as being unpatentable over various combinations of Ng, Parulski, Glatt and Acosta. Accordingly, we affirm the Examiner's rejections of claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 through 50 and 52 through 66 for the reasons set forth **infra**.

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I. Under 35 U.S.C. § 103(a), is the Rejection of Claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 as being unpatentable over the combination of Ng and Maeno Proper?

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner's conclusion. However, a suggestion, teaching, or motivation to combine the

relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. **In re Kahn**, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) citing **In re Kotzab**, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-1317 (Fed. Cir. 2000). See also **In re Thrift**, 298 F.3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002).

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to representative claim 1, Appellants argue in the Appeal Brief that there is no motivation to combine Ng and

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Maeno. Particularly, at pages 8 and 9 of the Appeal Brief, Appellants state the following:

There is nothing in any of the cited references or assertions as to the knowledge of those with ordinary skill in the art to combine the references in the manner asserted by the Examiner... The disparate teachings of Ng and Maeno, would not motivate one skilled in the art to combine these reference (sic) in the manner that the Examiner proposes. As noted above, one skilled in the art would not be motivated to look to Maeno, when Maeno itself uses old technology that is not capable of operatively performing the claimed operations.

Appellants reiterate the preceding arguments in the Reply Brief. Additionally, Appellants argue that Maeno does not teach or suggest the use of electronic mail to notify an interested user of an intrusion. Particularly, at page 2 of the Reply Brief, Appellants state the following:

[T]he system of Maeno has nothing to do with surveillance images and makes no use of an electronic mail message to a predetermined mailing address of an interested user. Nor does Maeno teach or suggest that the predetermined mailing address would be provided in an advance configuration operation.

In order for us to decide the question of obviousness, "[t]he first inquiry must be into exactly what the claims define." **In re Wilder**, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). "Analysis begins with a key legal question-- what

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is the invention claimed ?"...Claim interpretation...will normally control the remainder of the decisional process."

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-1568, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987).

We note that representative claim 1 reads in part as follows:

[W]herein said transmitting includes forming an electronic mail message having a predetermined mailing address, the predetermined mailing address being associated with the interested user and being provided during said configuring, and electronically mailing the surveillance image to the remote computer over the network using the electronic mail message.

We note at page 12, Appellants' specification states the following:

The notification unit 616 is provided to notify an interested person of the update condition. There are a variety of ways the notification unit 616 can notify the interested user, namely, telephone, cellular phone, pager, electronic mail (i.e. e-mail), facsimile, etc. In one embodiment, the image can be transmitted as a file transfer over the Internet 104 and the interested person can be notified by pager.

Thus, the claim does require the use of electronic mail to notify an interested user of an intrusion.

Now, the question before us is what Ng and Maeno would have taught to one of ordinary skill in the art? To answer this question, we find the following facts:

1. At column 3, lines 50 through 58, Ng states the following:

Video capture device 14 provides a video signal representing the captured image to image processor 12. Image processor 12 then performs various operations on the information provided in the video signal to detect motion and other changes in the image. Upon detection of motion or environment change, image processor 12 generates a motion detection signal. This motion detection signal may activate various alarms or other devices to indicate that motion or change is detected.

2. Further, at column 4, lines 39 through 57, Ng states the following:

A modem 28 is coupled to image processor 12 and communication medium 30. **Communication medium 30 may include a network, radio-frequency link, telephone line, or similar communication medium.** Modem 28 is used to remotely monitor the status and operation of image processor 12, and may also be used to contact a police department, security service, or particular individuals or organizations in response to the detection of motion in image 16. **For example, the detection of motion may automatically contact a local police department, a security service, or particular employees or managers of the building. The system is capable of generating a warning tone or other message**

for transmission across communication medium 30. Additionally, modem 28 can transmit the image captured at the time the motion was detected to a remote location. This permits the recipient of the captured image (on the other end of communication medium 30) to immediately view the event triggering the motion detection and respond accordingly. [Emphasis Added].

With the above discussion in mind, we find that Ng teaches a method and apparatus for remotely monitoring a building and for promptly notifying a predetermined user of an intrusion. Particularly, Ng teaches a camera for capturing an image, as well as a DMA difference logic and a controller for comparing the captured image frame with a reference image frame to determine whether a difference exists between the two frames. Further, Ng discloses that if the difference between the frames exceeds a predetermined threshold, a motion detection signal is generated to record the current image, and to sound an alarm. Additionally, Ng teaches that the alarm may trigger other activities, such as automatically contacting the police or a security service, and sending an electronic copy of the recorded image frame via a modem coupled to a network.

It is our view that one of ordinary skill in the art at the time of the present invention would have duly recognized that Ng's teaching of automatically sending an electronic copy of the

recorded image to the police via a modem amounts to the claimed limitation of using electronic mail to notify an interested user of an intrusion. The ordinarily skilled artisan would have readily been apprised of the fact that by automatically sending the recorded image frame to the police via the modem, Ng's disclosed system does suggest sending an electronic attachment to the police (at a predetermined address) via the modem to notify them of the intrusion.

As to Maeno, his disclosed crime notification system is limited to using facsimile to transmit a recorded image to notify an interested user of an intrusion. We find, however, that the Examiner's reliance upon Maeno for the cited teaching was cumulative since Ng discloses such teaching. It is our view that since Ng teaches the use of electronic mail to automatically notify an interested party of an intrusion, Maeno is cumulative to a proper rejection under 35 U.S.C. § 103 of representative claim 1. It is therefore our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to the ordinarily skilled artisan the invention as set forth in representative claim 1. Accordingly, the Examiner's obviousness

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rejection of claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 is sustained.

II. Under 35 U.S.C. § 103(a), is the Rejection of Claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 as being unpatentable over the combination of Ng, Parulski Proper?

With respect to representative claim 1, Appellants argue that Parulski does not teach electronically sending a recorded image to an interested party in response of a detected activity condition. As discussed above, we find that Ng discloses that limitation. Consequently, the Examiner's reliance on Parulski is cumulative to a proper rejection under 35 U.S.C. § 103 of representative claim 1. It is therefore our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to the ordinarily skilled artisan the invention as set forth in representative claim 1. Accordingly, the Examiner's obviousness rejection of claims 1, 2, 4, 5, 7 through 9, 11 through 18, 26 through 31, 39 through 44, 47 and 48 is sustained.

III. Under 35 U.S.C. § 103(a), is the Rejection of Claims 49, 50, 52 through 61 as being unpatentable over the combination of Ng, Acosta Proper?

With respect to claims 49, 50, 52 through 61, Appellants argue that Acosta is not combinable with Ng. As discussed above, we find that Ng discloses all the limitations of representative claim 1. Consequently, the Examiner's reliance on Acosta is cumulative to a proper rejection under 35 U.S.C. § 103 of claim 49. It is therefore our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to the ordinarily skilled artisan the invention as set forth in representative claim 1. Accordingly, the Examiner's obviousness rejection of claims 49, 50, 52 through 61 is sustained.

IV. Under 35 U.S.C. § 103(a), is the Rejection of Claims 13 through 15, 62 through 66 as being unpatentable over various combinations of Ng, Parulski, Glatt and Acosta Proper?

With respect to claims 13 through 15, 62 through 66, Appellants argue in the Appeal Brief that the various combinations of Ng with Parulski, Acosta and Glatt does not disclose a performance demanding level input for determining the rate of reduction of the temperature-related frequency. We have already addressed this argument in the discussion of claim 1 above, and we do not agree with Appellants. Further, Appellants

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argue that Glatt does not cure the deficiencies of the Ng-Parulski combination or the Ng-Acosta combination. As noted above, we find no such deficiencies in the cited combinations for Glatt to remedy. It is therefore our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to the ordinarily skilled artisan the invention as set forth in claims 13 through 15, 62 through 66. Accordingly, the Examiner's obviousness rejection of claims 13 through 15, 62 through 66 is sustained.

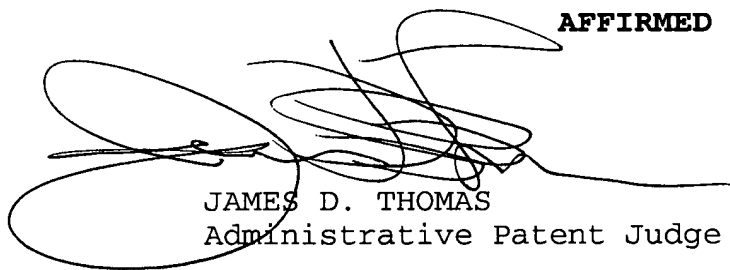
CONCLUSION

In view of the foregoing discussion, we have sustained the Examiner's decision rejecting claims 1,2,4,5,7 through 9,11,through 18, 26 through 31,39 through 44,47 through 50 and 52 through 66 under 35 U.S.C. § 103. Therefore, we affirm.


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No time period for taking any subsequent action in
connection with this appeal may be extended under
37 C.F.R. § 1.136(a)(1)(iv).

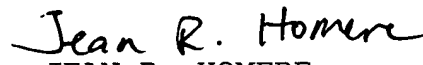
AFFIRMED



JAMES D. THOMAS
Administrative Patent Judge



JERRY SMITH
Administrative Patent Judge



JEAN R. HOMERE
Administrative Patent Judge

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